IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1052 of 1986

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TULSIDAS JIVARAJ

Versus

LAXMICHAND KANAJIBHAI SINCE DECD. THRO HIS HEIRS

Appearance:

1. Civil Revision Application No. 1052 of 1986

MR NAGIN N GANDHI for Petitioner No. 1

MR SURESH M SHAH for Respondent No. 1/1

MR MEHUL S SHAH for Respondent No. 1/1-1/4

RULE SERVED for Respondent No. 1/5-1/4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/10/2002

ORAL JUDGEMENT

This is a Revision Application preferred by the landlord under section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"] against the judgment and order dated 30th October, 1985 passed by the learned Assistant Judge, Bhavnagar in Regular Civil Appeal No. 56 of 1982.

The premises in dispute is a shop situated at Bhavnagar. The suit shop was leased to the defendant for a monthly rent of Rs. 60/=. The plaintiff instituted Civil Suit No. 463 of 1977 in the Court of Civil Judge [JD], Bhavnagar for recovery of the possession of the suit shop and the amount of rent due. The eviction of the defendant was sought on the grounds that : (a) the suit shop was required by the plaintiff reasonably and bona fide for his personal occupation and use; (b) that the defendant had caused nuisance and annoyance and (c) that the defendant was not ready and willing to pay the rent. The suit was contested by the defendant by filing written statement [Exh. 10]. The defendant also raised dispute as to the standard rent of the suit shop in Misc. Civil Application No. 128 of 1977 filed under section 11 (1) of the Rent Act. The learned trial Judge, under the judgment and order dated 7th October, 1981 passed decree for possession, fixed the standard rent of the suit shop at Rs. 60/= per month.

Feeling aggrieved, the defendant preferred Regular Civil Appeal No. 56 of 1982 in the District Court, Bhavnagar. The learned Assistant Judge, Bhavnagar heard the Appeal. Under the impugned judgment and order dated 30th October, 1985, the learned Judge was pleased to allow the Appeal and to set-aside the decree for possession passed by the trial Court. Feeling aggrieved, the plaintiff has preferred the present Civil Revision Application.

Mr. Gandhi, the learned advocate appearing for the petitioner has, at the outset, mentioned that he presses for the decree for eviction only on the ground that the defendant is not ready and willing to pay the rent. Mr. Gandhi has submitted that indisputably, on the date of the suit notice, the defendant was in arrears of rent for six months and more. That on receipt of the notice of demand, the defendant did not pay the amount of rent due. Even pending the suit, the defendant did not deposit the amount of rent due nor did he deposit the amount of rent regularly every month. The learned trial Judge had, therefore, rightly held that the defendant was liable to be evicted. However, the lower Appellate Court

has erred in holding that the defendant was entitled to protection under section 12 (3)(b) of the Rent Act and in setting aside the decree for possession passed by the trial Court.

According to the plaintiff, the defendant was in arrears of rent since 14th February, 1975. Thus, by the date of the suit notice, the defendant was in arrears of rent for thirty months. A notice of demand, as envisaged under section 12 (2) of the Rent Act was given to the defendant on 19th August, 1977. Hence, the plaintiff was entitled to recover possession of the suit shop. The defendant had denied that he was tenant in arrears. However, the learned trial Judge found that there was no evidence that the defendant had paid rent upto the month of August, 1977, as averred by him. It further appears that before expiration of period of one month from the date of the receipt of the suit notice, the defendant made Misc. Civil Application No. 128 of 1977 for fixation of standard rent under section 11 (1) of the Rent Act. Pending the said application, by order dated 31st August, 1977 made under section 11 (3) of the Rent Act, the learned trial Judge had fixed the interim standard rent at Rs. 50/= per month. Now to establish the readiness and willingness to deposit the rent, it was the duty of the defendant to pay the amount of interim standard rent fixed by the Court regularly every month as envisaged in Explanation to section 12 of the Rent Act. The learned trial Judge found that the defendant had not made such deposits regularly. The learned Judge, therefore, recorded a finding against the defendant and passed the decree for possession. The Court below, however, was of the opinion that the defendant was protected by section 12 (3)(b) of the Rent Act. No decree for possession, therefore, could have been passed against the defendant. It appears that the Court below has proceeded on the premise that after making Misc.Civil Application No. 128 of 1977 under section 11 (1) of the Rent Act, the defendant deposited the monthly rent regularly in the Court and by the date of the decree, no rent was due from the defendant. Thus, the defendant had satisfied the conditions mentioned in section 12 (3)(b) of the Rent Act. No decree for possession, therefore, could have been passed against the defendant. The records are to the contrary. As recorded by the trial Court, on 31st August, 1977, the learned trial Judge had made order on Misc. Civil Application No. 128 of 1977. Under the said order, the learned Judge had fixed the standard rent at Rs. 50/= per month. The defendant was directed to pay the entire amount of arrears of rent calculated on the basis of interim standard rent on or

before 11th September, 1977 and to deposit the said interim standard rent regularly every month in the Court on or before 10th of every month. Thus, by 11th September, 1977, the defendant was required to deposit the rent at the rate of Rs. 50/= per month for the entire period from 14th February, 1975 and to deposit Rs. 50/= every month thereafter. From the certified copy of the statement produced by Mr. Gandhi today, it appears that the defendant did deposit a sum of Rs. 1500/= on 1st September, 1977 i.e., he did partially comply with the order of the trial Court of depositing of arrears of rent, however, thereafter, the defendant appears to have fallen in arrears in as much as defendant has not deposited the sum of Rs. 50/= every month, as was directed by the learned trial Judge. For the period from September, 1977 till the date of the decree i.e., 7th October, 1981 i.e., for a period of four years, the defendant deposited a total sum of Rs. 1550/= that too in four deposits. Hence, it is clear that the learned Assistant Judge was misguided in believing that the defendant had deposited the interim standard rent fixed by the trial Court regularly every month.

This Court, in the matter of Jenabai Mohmed v. Gulamabbas Ismailji & Ors. [XII GLR 819], had an occasion to consider the effect of non-compliance with the order of fixation of interim standard rent made under section 11 (3) of the Rent Act. The Court held that, "..a tenant cannot claim protection under sec. 12 (1) of the Act by making an offer to pay or in paying the arrears due from him when the Court is about to pass a decree against him. He has to make an application in the Court under sub-sec. (3) of sec. 11 and thereafter pay or tender rent, if any, specified in the order made by the Court. If he does not approach the Court under sec. 11 (3), it is not open to him thereafter to claim the protection of sec. 12 (1) of the Act. In the instant case, the petitioner-tenant did make such an application to the Court under sec. 11 (3) of the Act, but she did not comply with the order, as found above. She would not, therefore, be entitled to protection as per the decision of the Supreme Court." Similar is the view of this Court in the matter of Kamlaben W/o. Shankarrao A. Shinde & Ors. vs. Dashrathrao P. Shinde & Ors. [1997 (3) GCD 56 (Guj)]. In the said case, the interim standard rent fixed by the Court under section 11 (3) of the Rent Act was not complied with by the tenant. The Court rejected the plea that the interim standard rent payable by the tenant should be examined, keeping in view the standard rent finally decided by the trial Court. The Court negatived this contention and held that,

"Therefore, during the pendency of the suit, the tenants had no other basis for showing their readiness and willingness to deposit the amount in court, except on the basis of the amount fixed by way of the interim order referred to hereinabove. The tenants have lost the protection of Sec. 12 (3)(b), because it is this order which has not complied with. ... The very purpose of the statutory provision for determination of interim standard rent is to provide or furnish a basis to the tenant to show and establish before the Trial Court his readiness and willingness to pay, until the standard rent application is finally decided. Obviously, no tenant can be permitted to plead that he may not have complied with the directions as to deposit of interim standard rent, and further that such non-compliance would be of no consequence, since ultimately by final judgment, the standard rent determined is lower than the interim standard rent. To accept such a contention would clearly amount to putting a premium upon either the tenants' negligence or to confer upon the tenants a protection not contemplated by law." The above judgments have been followed by me in the matter of Dilipkumar Kanchanlal Parekh v. Hasmukhlal Chunilal Sutaria [Since Deceased] Thro' His Heir [Civil Revision Application No. 314 of 1993 :: Decided on 8th October,2002].

In the backdrop of the above facts, it is clear that the defendant failed to comply with the direction to pay interim standard rent regularly every month. The defendant, therefore, cannot be said to be ready and willing to pay the rent as envisaged under section 12 (1) of the Rent Act. The plaintiff shall, therefore, be entitled to recover the possession of the suit shop.

In the result, the petitioner should succeed. The Revision Application is allowed. The impugned judgment and order dated 30th October, 1985 passed by the learned Assistant Judge, Bhavnagar in Regular Civil Appeal No. 56 of 1982 is quashed and set-aside. The judgment and decree dated 7th October, 1981 passed by the learned Civil Judge [JD], Bhavnagar in Civil Suit No. 463 of 1977 is restored. Rule is made absolute with costs throughout.

[Miss R.M Doshit, J.]

Prakash*